Supreme Court, U. S
FILED
NOV 13 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-350

PACIFIC LIGHTING SERVICE COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY,

No. 75-359

THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, *Petitioners*

v.

FEDERAL POWER COMMISSION, *Respondent*

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR PETITIONERS AND FOR RESPONDENT GENERAL MOTORS CORPORATION IN REPLY TO BRIEF FOR RESPONDENT FEDERAL POWER COMMISSION

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Petitioners, Pacific Lighting Service Company and Southern California Gas Company ("Pacific Lighting et al.") and the People of the State of California and the Public Utilities Commission of the State of California ("California et al."), and Respondent, General Motors Corporation, ("General Motors"), through their Counsel, hereby file their Brief in reply to the Brief for Respondent, Federal Power Commission ("Commission") in Opposition.

The Commission, in its Brief, has stated several times [1] that it is the position of Petitioners that the Commission, inter alia, was required to order hearings under Section 4(e) of the Natural Gas Act, 15 U.S.C. § 717c(e) (1970), *before* permitting the new curtailment plan proposed by Transwestern Pipeline Company to become effective. This characterization completely misconstrues the issue raised by Petitioners.

Such an argument by Petitioners would be tantamount to contending that the Commission should have *suspended* the effectiveness of the proposed curtailment plan pending the actual commencement and completion of Section 4 hearings. However, Petitioners have stated clearly that they are not objecting to the exercise of the Commission's suspension powers in this case, since the duty to hold Section 4(e) hearings does not depend on the exercise of the suspension power in Section 4(e).[2] Instead, Petitioners are contending only that the Commission was required to hold hearings under Section 4(e), in which the proponents of the proposed curtailment plan would bear the burden of proof, rather than under Section 5(a), in which the opponents of the plan would bear the burden of proof. Using this procedure, as clearly noted by Petitioners,[3] the Commission could permit the plan to go into effect without any suspension but pending the outcome of Section 4(e) hearings and subject to any modifications found necessary based on the proponents' failure to

[1] See Brief for the Commission in Opposition at 4, 5, 6 and 9.

[2] Petition of Pacific Lighting et al. at 24; Petition of California et al. at 11-12. See also Brief for Respondent, General Motors, in Support at 2, n.1, and 13.

[3] Petition of Pacific Lighting et al. at 24; Petition of California et al. at 11-12. See also Brief for Respondent, General Motors, in Support at 5-6, 13.

sustain their burden of proof on the record ultimately compiled in such hearings.

Respectfully submitted,

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November 13, 1975